IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8430 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GITA K MURCH - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR NK MAJMUDAR for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 3.
NOTICE SERVED for Respondent(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the impugned order dated 23rd July 1996

(Annexure B) passed by the respondent No.2 by which the penalty was imposed upon the petitioner of withholding of one increment for one year without future effect.

2. The petitioner was serving as a Principal in Nursing School, Surat and on the basis of some applications that the admission was given in the Nursing School to two candidates, though they were not residing in Surat and they were not entitled, a show cause notice was served upon the petitioner and the petitioner was directed to remain present on 27th March 1996 directing the petitioner to produce her witnesses or relevant documents in support of her defense. Petitioner was called upon to give explanation by communication dated 14th March 1996. In charge Divisional Deputy Director, Health and Medical Services, Surat held detailed inquiry, statements of the concerned persons were recorded and it was even admitted by the concerned persons as well as the petitioner that though the two candidates were not entitled to get admission, they were granted admission and considering the statement of the petitioner dated 17-4-1996 by which she has admitted her guilt, the Commissioner, Health and Medical Services, Gandhinagar, State of Gujarat passed the impugned order imposing minor penalty as contemplated

under rule 6 of Gujarat State Civil (Disciplinary and Appeal) Rules 1971. Being aggrieved by the same, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri Suthar, learned advocate appearing on behalf of the petitioner has submitted that no inquiry has been initiated against the petitioner and no charge sheet has been given and therefore, the impugned order is in breach of principles of natural justice. It is also further submitted that even the statement dated 17-4-1996 has also not been given to the petitioner. Therefore, it is requested to quash and set aside the impugned order.

4. Petition is opposed by Shri Maulik Nanavati, learned AGP. He has submitted that in view of the fact that minor penalty was imposed, there is no question of issuing any charge sheet and/or holding any departmental inquiry. It is also submitted that in fact the inquiry was conducted by the In charge Divisional Deputy Director and ample opportunity was given to the petitioner and after considering the statement of concerned candidates, statement of the petitioner and considering the fact that

though two candidates were not entitled to be admitted as they were not belonging to Surat, they were granted admission dehors the rules, the impugned order has been passed, which is in accordance with law and after following due procedure and which is not in violation of the principles of natural justice.

5. It is required to be noted that by impugned order, a minor penalty has been imposed and that to after giving opportunity to the petitioner and after holding an inquiry by the In charge Divisional Deputy Director, Surat and after considering the statement of all the persons inclusive of the petitioner and considering the fact that two candidates were wrongly granted admission, the minor penalty has been imposed. Considering the provisions of Gujarat State Civil (Disciplinary and Appeal) Rules 1971, more particularly rule 6 when a minor penalty is imposed, neither any charge sheet nor any departmental inquiry is required to be initiated as required under rule 10 of the Rules. The only thing is that the petitioner was required to be given a reasonable opportunity which has been granted. Under the circumstances, the contention of the petitioner that no charge sheet has been issued and no departmental inquiry

has been initiated and therefore, the impugned order is in breach of principles of natural justice, cannot be accepted. So far as contention of the petitioner with regard to non supply of the statement of the petitioner dated 17-4-1996 is concerned, it is required to be noted that it is her own statement. Even, otherwise, it is submitted in the petition that it can be said that a genuine or bona fide mistake might have been committed due to heavy work load. In view of the above and considering the above, if the punishment of withholding of only one increment without future effect for one year is imposed, it cannot be said that it is arbitrary and/or illegal and/or in violation of principles of natural justice.

6. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be and is accordingly dismissed. Rule discharged. No costs.

(M.R.SHAH,J.)

shekhar/-